IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 892 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.SARAVANA KUMAR - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
Shri Unmesh Shukla for SINGHI & CO for Applicant(s) : 1,
Mr. Mr Mengdey, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR DAKSHESH MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2007
ORAL JUDGMENT

Rule. Shri MR Mengdey, learned APP waives service of Rule on behalf of respondent No.1 and Shri Dakshesh Mehta, learned advocate

waives service of Rule on behalf of respondent No.2. By way of this petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure the petitioner original-accused No.4 has prayed for an appropriate order to quash and set aside complaint being Criminal Case No. 1649 of 2003 filed by respondent No.2 herein and pending before learned Metropolitan Magistrate, Court No.11, Ahmedabad qua the present petitioner as well as the order passed thereon by the learned Metropolitan Magistrate, Court No.11, Ahmedabad issuing summons against the present petitioner.

2. Criminal Case No. 1649 of 2003 is filed by the respondent No.2 herein, original-complainant in the court of learned Metropolitan Magistrate, Court No. 11, Ahmedabad against the petitioner and others under the provisions of Section 138 and 142 of The Negotiable Instruments Act alleging inter alia that the complainant and accused No.1 company entered into an agreement

dated 30-11-2002 and by virtue of the said agreement the accused No.1 Company was required to make payment of certain amount as per the services and materials supplied by the complainant company to the accused No.1 company vide invoice raised by the complainant company. It is further alleged in the complaint that huge amount was due and payable by the accused No.1 company to the complainant company and accepting legal dues of the aforesaid company the accused No.2 issued cheque No. 821745 dated 25th March 2003 for an amount of Rs. 8,52,311 and cheque No. 824331 dated 13th May 2003 for Rs. 2,00,000 and the said cheque was issued in favour of the complainant company duly signed by accused No.2. It is further averred in the complaint that both the aforesaid cheques were deposited with their banker however both the cheques came to be returned dishonoured with endorsement “Insufficient Funds”; thereafter the petitioner and other accused persons were served with statutory notice as required under Section 138 of

the Negotiable Instruments Act; and within the stipulated time the accused persons failed and neglected to make payment of the returned cheques and therefore it is alleged that the petitioner and others have committed the offences under Section 138 read with Section 141 of the Negotiable Instruments Act. In the said complaint the learned Metropolitan Magistrate, Court No.11, Ahmedabad issued summons against the petitioner and others. Being aggrieved and dissatisfied with the aforesaid complaint and issuance of summons by the learned Metropolitan Magistrate against the petitioner, original-accused No.4 the petitioner has preferred the present petition for the aforesaid relief.

3. Shri Unmesh Shukla, learned advocate appearing for the petitioner has vehemently submitted that looking to the averments and allegations in the complaint no case is made out against the petitioner for the offences under Section 138 read with 141 of the Negotiable

Instruments Act. It is submitted that there are no specific averments in the complaint as to how the petitioner as a Director was in-charge of day to day management of affairs of the company. It is submitted that as such there are no allegations at all against the petitioner, original-accused No.4. It is further submitted that the cheque in question was issued pursuant to the agreement dated 30.11.2002 and the said cheque was issued by the accused No.1 company duly signed by accused No.2; and the petitioner had already signed as Director much prior to the said agreement dated 30.11.2002 more particularly on 13.11.2002. It is therefore submitted that even at the relevant time when the cheque was issued on 25th March 2003 and 13th May 2003 the petitioner was not even the Director of accused No.1 Company. It is submitted that in absence of any allegation and averment in the complaint that the petitioner was in-charge of and management of day-to-day affairs of the company which has issued the cheque the petitioner cannot be held

vicariously liable under Section 141 of the Negotiable Instruments Act. It is submitted that the ingredients of Section 141 read with Sec. 138 of the Negotiable Instruments Act are not fulfilled so as as petitioner, original-accused No.4 is concerned and therefore it is requested to quash and set aside the impugned complaint qua the petitioner, original-accused No.4.

4. The petition is opposed by Shri Dakshesh Mehta, learned advocate appearing on behalf of respondent No.2. It is submitted that looking to the averments and allegations in the complaint a case is made out against the petitioner for the offences under Section 138 read with Section 141 of the Negotiable Instruments Act and therefore it is requested to dismiss the present petition. Shri Mengdey, learned APP has requested to pass appropriate order considering the averments and allegations in the complaint.

5. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute and even as per the averments in the complaint that the accused No.1 entered into an agreement dated 30.11.2002 and by virtue of the said agreement original-accused No.1 company was required to make certain amount and the cheques in question dated 25th March 2003 and 13th May 2003 came to be issued by original-accused No.1 duly signed by original-accused No.2. On bare reading of the complaint as a whole it appears that there is no allegation against the petitioner, original-accused No.4 as to how and in what manner the petitioner is to be held liable for dishonour of the aforesaid cheques. In absence of any allegation and/or averment against the petitioner, original-accused No.4 the petitioner cannot be held vicariously liable under Section 141 read with Section 138 of the Negotiable Instruments Act. The cheques have been issued by original-accused No.1 company duly signed by accused No.2. There is no reference to the

petitioner, original-accused No.4 in the complaint. Under the circumstances it cannot be said that the petitioner has committed any offence as alleged under Section 138 of the Act. It is also required to be noted at this stage that the petitioner has resigned as Director of the original-accused No.1 company on 13.11.2002 and that the aforesaid 2 cheques in question dated 25th March 2003 and 13th May 2003 are issued by the original-accused No.1 duly signed by original-accused No.2 by virtue of agreement dated 30.11.2002, i.e., much after resignation of the petitioner as Director. Thus it appears that at the relevant time the petitioner was not even Director of original-accused No.1 company. Even otherwise as stated above there are no allegations and/or averments in the complaint against the petitioner. Under the circumstances, to continue the criminal proceedings against the petitioner, original-accused No.4 would be abuse of process of Court and unnecessary harassment to the petitioner and this is a fit case to exercise

powers under Section 482 of the Code of Criminal Procedure.

6. For the reasons stated above, the petition succeeds. The impugned complaint being Criminal Case No. 1649 of 2003 filed by respondent No.2 herein and pending before learned Metropolitan Magistrate, Court No.11, Ahmedabad qua the present petitioner as well as the order passed thereon by the learned Metropolitan Magistrate, Court No.11, Ahmedabad issuing summons against the present petitioner are hereby quashed and set aside qua the present petitioner, original-accused No.4 only. Rule is made absolute accordingly.

[M.R. Shah, J.]

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